



P.O. BOX 23223 Oakland, CA 94623
Phone (510) 419-0120 / Fax (510) 832-1456

LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 15-Feb-08
Time 11:14 AM

Dated: 2.15.08

TRANSMITTAL No: KFM-TRN-000721

Rev: 00

To: **Pedro Sanchez**
Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

Co/Job # 364-4347
Contract # 04-0120E4
Sub/Supplier:
Sub/Supplier No:

Subject: NOPC 20 - Final Notice of Potential Claim

Special Provis. (SP) REF:

Standard Spec. (SS) REF:

RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items: ☒ Attached

☐ Via Fax

☐ Contract Plans/Specs

☐ Certs of Compl./Samples

☐ Working Drawings

☐ Drawings/Calculations

☐ Schedule

☐ WQCP and/or Addenda

☐ Change Order

☐ Progress Estimate Request

☐ Weekly Welding Reports

☐ Copy of Letter

☐ Payroll Information

☐ CWR Procedure

Item	Date	Copies	Description	Pages
01	15-Feb-2008	1	NOPC 20 - Final Notice of Potential Claim	

These are transmitted as checked below:

☐ For Approval

☐ For Review/Comment

☐ Return For Correction

☒ For Your Use

☐ As Requested

☐ For Information

Remarks:

CC:

Submitted By: **George Atkinson**

(KFM Staff Member - Originator of Transmittal)

Checked & Sent By: **R. Senning**

Contract Admin/DCS Staff



STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
**FULL AND FINAL DOCUMENTATION OF
POTENTIAL CLAIM**
CEM-6201C (NEW 9/2002)

FOR STATE USE ONLY		
Received By	(For resident engineer)	Date

TO Pedro Sanchez (resident engineer)	CONTRACT NUMBER 04-0120E4	DATE February 15, 2008	IDENTIFICATION NUMBER 20-011808
--	------------------------------	---------------------------	------------------------------------

This is the Full and Final Documentation of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

DATE: January 18, 2008

The complete and factual narration of events which fully describe the nature and circumstances that caused the dispute or disagreement and potential claim are attached hereto.

Please see attached "NOPC 20-011808 -- Final Notice of Potential Claim"

(attach sheets as required for full and final documentation)

The basis of this claim including all relevant contract provisions and a statement of the reasons these provisions support and provide basis for entitlement of the potential claim are attached hereto.

Please see attached "NOPC 20-011808 -- Final Notice of Potential Claim"

(attach sheets as required for full and final documentation)

The identification and copies of any documents and substance of any oral communication that support the potential claim are attached hereto.

Please see attached "NOPC 20-011808 -- Final Notice of Potential Claim"

(attach sheets as required for full and final documentation)

The exact dollar amount requested and an itemized breakdown of individual costs segregated by labor, materials, equipment and other are attached hereto.

Please see attached "NOPC 20-011808 -- Final Notice of Potential Claim"

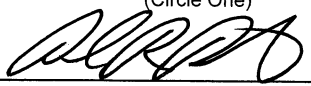
(attach sheets as required for full and final documentation)

The exact amount of any time adjustment requested including justification thereof and time impact analysis are attached hereto.

Please see attached "NOPC 20-011808 -- Final Notice of Potential Claim"

(attach sheets as required for full and final documentation)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documentation are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

Kienit/Fel/Manson AJV
SUBCONTRACTOR or CONTRACTOR
(Circle One)

(Authorized Representative)

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded by

PRIME CONTRACTOR

(Authorized Representative)

NOPC 20-011808 – Final Notice of Potential Claim

Nature and Circumstances of Potential Claim

Kiewit/FCI/Manson AJV (“KFM”) was impacted by delayed steel piling deliveries from its pile supplier Trans Bay Steel, Inc (“TBS”). Late deliveries of piles extended KFM’s pile driving operations and impacted pile driving efficiency.

Trans Bay Steel has notified the State that the pile delivery delays are due in part to direction received from the State with respect to the use of welding operator trainees. TBS has quantified their delays and other damages resulting from State direction and presented them to the State for compensation. The State denied Trans Bay’s request for compensation and TBS has accordingly filed NOPC 6 regarding this matter.

NOPC 6 has not been resolved as of the filing date of this Final NOPC 20-011808. NOPC 6 was heard by the Disputes Resolution Board (“DRB”) on October 30, 2007. In its unanimous recommendation made December 21, 2007, the Board found that State should compensate the contractor under Standard Specification 4-1.03, “Changes”, for its additional costs and delays. KFM and TBS have been notified by the State’s letter of February 1, 2008 to the DRB that some elements of TBS’ proposal are acceptable for compensation. The elements that the State finds acceptable are minor. The major aspects of TBS’ damages determination the State finds un-proven and hence not subject to compensation.

KFM expects TBS to respond to the State’s assertion that the damages due to the State’s actions with regard to welding operator trainees for impacts are un-proven. Upon successful determination between the State and TBS of actual delays resulting from this issue KFM will re-analyze its damage determination.

KFM requests that upon settlement of responsibility for TBS pile delivery delays the State issue a contract change order under Standard Specification 4-1.03, “Changes”, to compensate KFM for its commensurate impact costs due to late pile delivery.

Contract Basis for Potential Claim

Imminent completion of all contract work by KFM and Contract Acceptance by the Department without an approved contract change order (“CCO”) to compensate KFM for pile delivery delays gave rise to this NOPC.

As discussed by TBS in NOPC 6, contract interpretations made by the State and the corresponding actions taken by the State adversely affected Trans Bay’s execution of its work. The State’s interpretations and actions discussed in NOPC 6 represent an alteration, deviation, and addition to the contract specifications and are compensable under Standard Specification 4-1.03, “Changes.”

Impacts to KFM from late pile deliveries are accordingly compensable to KFM under Standard Specification 4-1.03 in relation to the degree to which the schedule delay encountered by TBS is the result of actions taken by the State.

Following filing NOPC 6 by KFM on behalf of TBS, Contract Work continued towards completion and Contract Acceptance without a change order compensating KFM and Trans Bay for its damages being issued or becoming effective and incorporated into the contract.

Amended Standard Specification 9-1.07B, “Final Payment and Claims”, fifth paragraph, notes that claims made in response to the Proposed Final Estimate following Contract Acceptance will not be considered if the Contractor did not first comply with applicable notice or protest requirements of the contract including 9-1.04 “Notice of Potential Claim”.

As a CCO for damages due to the State’s actions described in NOPC 6 was not effective as of January 18, 2008, and could not be reasonably anticipated to be approved and effective by KFM’s anticipated completion date of January 18, 2008, KFM made a Notice of Potential Claim to allow for claims associated with this work in accordance with Amended Standard Specification 9-1.07B, “Final Payment and Claims”.

Estimated Cost of Potential Claim

KFM has estimated damages resulting from the delays determined by TBS and described in NOPC 6. A preliminary estimate of KFM’s damages in total is \$784,146.00. A determination of damages is attached based on the entire delay described in TBS’s NOPC 6 being attributable to NOPC 6 issues. As these delays have not been determined between the State and TBS, KFM’s estimate is still preliminary. Upon settlement of NOPC 6 by TBS and the State and apportionment of responsibility for delay between the parties, KFM will re-determine its damages accordingly.

KFM can provide additional supporting documentation with respect to its damages determination upon request by the State.

Time Impact Analysis

KFM has determined that the pile delivery delays did not affect the project critical path and no adjustment to contract time of performance is warranted based on the issues underlying this NOPC.

Final NOPC #20 - TBS Welding Trainees -- KFM Impact

KFM Estimate Summary

Description	Quantity	Units	Rate	Amount	Labor	Equipment	Materials/STS	Subcontractors
Extended Equipment - E2				\$ 417,107		\$ 30,241	\$ 386,866	
Extended Equipment - T1				\$ 242,403		\$ 242,403		
Derrick Standby Labor				\$ 10,134	\$ 10,134.00			
Manson 62 Conversion to Pile Barge				\$ 3,873	\$ 3,873.00			
SUBTOTALS				\$ 673,517	\$ 14,007	\$ 272,644	\$ 386,866	\$ -
TAX 8.75% or Bond for Sub				\$ 33,851			\$ 33,851	\$ -
MARK-UPS				\$ 73,258	\$ 3,922	\$ 27,264	\$ 42,072	\$ -
TOTAL				\$ 780,626	\$ 17,929	\$ 299,909	\$ 462,788	\$ -
Bond (0.424%)				\$ 3,310				
San Francisco Wage Tax @ 1.5% of Labor				\$ 210				
Grand Total				\$ 784,146				

Time Impacts:		
KFM Delay to Project Completion	0	

WORK SHEET

Project E2T1

Type of Work TBS IMPACTS - E2 SUM

Estimator GA

Date 10/31/07 R 10/26/07

Item No.

Sheet No.

✓ OVERLAP + SHIFTING 2X
HAAKON MITIGATES IMPACT

ADD 54 CD v. RENT ARGUMENT

TERM. 5/8/06 - USE M.67

10-582V1271CD

١٠٠

✓ 71 CD ✓

130

✓ 136D ✓

[illegible]

2

JAN 06 UPDATE (E6 Ad)

EZ Bot Deriv

152 TOP DIV

McNICK REMOVED

4.155 Drive/Space/Drive

MISS CLEANOUT / SEAL CONC

As Built

E2 But DEL

E2 TOP DEL

MEINIC R&MBB

CLASS DRIVE/SPICE/DRIVE

MISS CLEANOUT / SEAL CONC

Equipment

menic

EM 1668 BARAZ

M-62 Ba2G3

66-33
FBI

4. EA 1580 CFM A/C

HAMMER G2A3

M-5/11362

WORK SHEET

Project E2T1
 Type of Work NORX 20

Estimator GA
 Date 2/14/08

Item No.
 Sheet No.

DB HAARON STANDBY LABOR

DB HAARON ON OPERATED STANDBY 10 DAYS.

ESTIMATED DAMAGES @ 2 'GROUP 1' OPERATORS FOR $10 \times 8 = 80$ hr ea.

$\therefore 2 \text{ ops} \times 10 \text{ days} \times 8 \text{ hrs/day} \times \$605 \text{ wage/fringe} \times 1.13 \text{ Surcharge} = \underline{\underline{\$10,134}}$

Cost Cd	WkEnd Dt	Wrk Dt	Crft	Empl	Firm	St Hrs	Ot Hrs	Dt Hrs	Wages Amt	Add	Ons Amt	LCA Adj
1800.10	04-30-06	04-29-06	700	7079.7	7003.7	0	8.0	0	408		396	LCA
1800.10	05-07-06	05-02-06	701	7022.7	7003.7	8.0	2.0	0.5	371		428	
1800.10	05-07-06	05-06-06	701	7022.7	7003.7	0	2.0	0	93		94	
1800.10	05-07-06	05-06-06	701	7258.7	7003.7	0	2.0	0	82		88	
1800.10	05-07-06	05-04-06	701	7022.7	7003.7	8.0	0	0	247		306	
1800.10	05-07-06	05-04-06	701	7258.7	7003.7	8.0	0	0	219		290	
1800.10	05-07-06	05-05-06	701	7022.7	7003.7	4.0	1.0	0	170		200	
1800.10	05-07-06	05-05-06	701	7258.7	7003.7	4.0	1.0	0	151		190	
05-07-06 Subtotal						32.0	8.0	0.5	1,333		1,596	
1800.10	05-14-06	05-08-06	700	7001.1	7001.1	8.0	0	0	272		320	Adj
1800.10	05-14-06	05-08-06	700	7001.1	7001.1	8.0	0	0	272		320	LCA
1800.10	05-14-06	05-08-06	700	7008.6	7001.1	8.0	0	0	272		320	Adj
1800.10	05-14-06	05-08-06	700	7008.6	7001.1	8.0	0	0	272		320	LCA
1800.10	05-14-06	05-09-06	161	1024.9	7068.0	2.5	0	0	86		96	Adj
1800.10	05-14-06	05-09-06	161	1024.9	7068.0	2.5	0	0	86		96	LCA
1800.10	05-14-06	05-09-06	161	1092.6	7068.0	1.0	0	0	35		38	Adj
1800.10	05-14-06	05-09-06	161	1092.6	7068.0	1.0	0	0	35		38	LCA
1800.10	05-14-06	05-09-06	167	1122.1	7068.0	2.5	0	0	76		90	Adj
1800.10	05-14-06	05-09-06	167	1122.1	7068.0	2.5	0	0	76		90	LCA
1800.10	05-14-06	05-09-06	700	7001.1	7001.1	5.0	0	0	170		200	Adj
1800.10	05-14-06	05-09-06	700	7001.1	7001.1	5.0	0	0	170		200	LCA
1800.10	05-14-06	05-09-06	700	7008.6	7001.1	5.0	0	0	170		200	Adj
1800.10	05-14-06	05-09-06	700	7008.6	7001.1	5.0	0	0	170		200	LCA
1800.10	05-14-06	05-09-06	700	7068.0	7068.0	2.0	0	0	68		80	Adj
1800.10	05-14-06	05-09-06	700	7068.0	7068.0	2.0	0	0	68		80	LCA
1800.10	05-14-06	05-09-06	701	7127.4	7068.0	1.5	0	0	47		58	Adj
1800.10	05-14-06	05-09-06	701	7127.4	7068.0	1.5	0	0	47		58	LCA
1800.10	05-14-06	05-09-06	701	7200.9	7068.0	1.5	0	0	46		58	Adj
1800.10	05-14-06	05-09-06	701	7200.9	7068.0	1.5	0	0	46		58	LCA
05-14-06 Subtotal						0	0	0	0		0	
1800.10	05-21-06	05-15-06	701	7022.7	7003.7	6.0	0	0	186		230	
1800.10	05-21-06	05-15-06	701	7115.9	7003.7	6.0	0	0	185		230	
1800.10	05-21-06	05-18-06	160	1014.0	7003.7	2.0	2.0	0	180		177	
1800.10	05-21-06	05-18-06	160	1016.5	7003.7	2.0	2.0	0	183		178	
1800.10	05-21-06	05-18-06	163	1104.9	7003.7	2.0	2.0	0	154		162	
1800.10	05-21-06	05-18-06	167	1122.1	7192.8	1.5	0	0	46		54	
1800.10	05-21-06	05-18-06	700	7013.6	7013.6	2.0	2.0	0	170		179	
1800.10	05-21-06	05-18-06	700	7076.3	7013.6	2.0	2.0	0	154		170	
1800.10	05-21-06	05-18-06	701	7022.7	7013.6	8.0	2.0	0	339		400	
1800.10	05-21-06	05-18-06	701	7112.6	7013.6	8.0	2.0	0	340		400	
1800.10	05-21-06	05-18-06	701	7115.9	7013.6	8.0	2.0	0	340		399	

Convert M 62 / M 72 mos

Cost Cd	WkEnd Dt	Wrk Dt	Crft	Empl	Firm	St Hrs	Ot Hrs	Dt Hrs	Wages Amt	Add Ons Amt	LCA Adj
1800.10	05-21-06	05-18-06	701	7202.5	7192.8	1.0	0	0	31	39	
1800.10	05-21-06	05-18-06	701	7218.1	7013.6	3.5	2.0	0	201	228	
1800.10	05-21-06	05-18-06	701	7254.6	7192.8	1.0	0	0	31	38	
1800.10	05-21-06	05-18-06	701	7258.7	7013.6	8.0	2.0	0	302	379	
1800.10	05-21-06	05-19-06	701	7022.7	7003.7	8.0	1.5	0	317	376	
1800.10	05-21-06	05-19-06	701	7115.9	7003.7	8.0	1.5	0	316	376	
1800.10	05-21-06	05-19-06	701	7258.7	7003.7	8.0	1.5	0	281	357	
	05-21-06	<u>Subtotal</u>				85.0	24.5	0	3,756	4,372	
1800.10	05-28-06	05-22-06	701	7022.7	7003.7	8.0	2.0	0	340	400	
1800.10	05-28-06	05-22-06	701	7115.9	7003.7	8.0	2.0	0	340	400	
	05-28-06	<u>Subtotal</u>				16.0	4.0	0	680	800	
1800.10		<u>Subtotal</u>				133.0	44.5	0.5	6,177	7,164	
<u>Total</u>						133.0	44.5	0.5	6,177	7,164	

Approx. 1/3 OF COST

WOULD HAVE BEEN FOR

CONVERTING THE GZ BG.

~ \$4,250

DB

Convert to CT Pricing:

Most Labor = Dig bucks: Add Primer @ 22.065/hr.

Total = (\$6,177 + (133 + 44.5 + 1.5)(22.065)) 1/3 = \$3,363

Surcharge = @ 16% ST/OT - use drilling - must closely detail.

Wg to Surcharge = (133 x 16) + (44.5 + 1.5) x 16 = 15.5%

133 + 44.5 + 1.5

3368
x 1.15
\$3,873

CA
10/10/07